

**BEFORE THE STATE BOARD OF MEDIATION
STATE OF MISSOURI**

INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS, LOCAL 2665,)	
)	
Petitioner,)	
)	
v.)	Public Case No. R 89-024
)	(Cross Reference 85-016 and 75-112)
)	
CITY OF KIRKWOOD,)	
)	
Respondent.)	

JURISDICTIONAL STATEMENT

This case appears before the State Board of Mediation upon the filing by International Association of Fire Fighters, Local 2665, of a petition for certification as public employee representative of all non-supervisory employees of the Kirkwood fire department. Hearing was held on July 13 and 19, 1989, in Kirkwood, Missouri, at which representatives of Local 2665 and the City were present. The case was heard by State Board of Mediation Chairman Mary Gant, employer member Milton Talent and employee member J. Harvey Henry. The State Board of Mediation is authorized to hear and decide issues concerning appropriate bargaining units by virtue of Section 105.525, RSMo. 1978.

At the hearing, the parties were given full opportunity to present evidence. The Board, after a careful review of the evidence, sets forth the following findings of fact and conclusion of law.

FINDINGS OF FACT

The City of Kirkwood (hereinafter referred to as the City) maintains a fire department for the purpose of providing fire fighting and emergency medical responses. The department consists of 39 employees, namely a fire chief, two assistant chiefs (one

who is designated as training officer and the other as fire marshall), nine captains, nine engineers, seven fire fighter/paramedics and eleven fire fighters (the latter three classifications referred to collectively as fire fighters). The fire chief is the head of the department. Directly below the chief in the organizational chain of command are the assistant chiefs. Under the assistant chiefs are the captains and below them are the fire fighters.

All employees work at one of the City's three engine houses which are known as House 1, House 2 and House 3; House 1 contains the administrative offices of the department. The chief and the assistant chiefs work out of House 1 and normally work Monday through Friday, 8:00 a.m. to 5:00 p.m. The captains and fire fighters work 24 hour shifts out of the three houses. There are three rotating shifts at each engine house with nine crews in all. A captain or acting captain is in charge of each crew and responsible for it. At House 1 there are two men on each crew aside from the captain and at House 2 and 3 there are two men on each crew aside from the captain.

All three of the fire houses contain living, working, sleeping and eating areas. The captains and fire fighters do not have separate areas; instead, they all have equal access to the various sections of each fire station. Each station has a daily work routine. This routine is posted and lists duties for the fire fighters to perform. Daily duties include equipment maintenance and general cleaning chores. The captains are responsible for seeing that the daily work routine is completed, but the record indicates that fire fighters require little direct supervision in performing these duties because they are considered "automatic". Captains are not required to perform these daily duties but some captains have done them on occasion.

Each captain prepares a daily report log, keeps records of employee traded time and calls employees for scheduled overtime. some captains have been assigned additional administrative duties by the chief, to wit: Smith is in charge of records and prepares a monthly report concerning all fires, losses and insurance which is turned into

the City Council; Watts maintains communications and coordination with the police department; Bacon serves as Emergency Medical Service (EMS) officer and coordinates all aspects of the EMS personnel; Paul serves as safety officer and prepares various safety reports; Bladdick is in charge of testing hydrants and hoses and keeping records on them; and Lenz is in charge of partial trades. The captains at House 1 do more administrative duties than those at House 2 and 3, but the captains at House 2 and 3 could do the duties at House 1 if they worked there.

Captains are responsible for conducting training sessions for the fire fighters. The city tries to have two hours of training per day, five days per week. The training schedule is established by the assistant training officer and conducted by the captains.

When an emergency call comes in, fire fighters and captains respond to their assigned equipment. The engineer drives the truck to the fire scene, lays out the hose and pumps the water; the paramedic serves as a fire fighter at the fire scene although he may assume responsibility over medical emergencies; and fire fighters take orders from the captain to do whatever is necessary in combating the fire. While on occasion a captain may work alongside fire fighters, it is not a captain's responsibility to engage in actual fire fighting activities. Instead, the captain is in command of the fire scene upon arrival and remains in charge at the fire scene. The department's protocol is that the first captain at the fire scene is in charge and makes the decisions on how to combat the fire. He determines whether additional equipment is needed, what rescue efforts are needed and where water is needed. Captains who appear at the scene later oversee their crew on a particular section of the fire. The first captain at the fire scene remains in charge even if someone higher in rank arrives at the scene unless the captain decides to relinquish command to them, however, the captain seldom relinquishes control.

Fire fighters are evaluated on an annual basis by the captains who in turn are evaluated by the assistant chiefs. Captains evaluate fire fighters on a written form by

assigning points to various categories; if points are deducted from a category the captain must indicate (in writing) why the employee did not receive the full amount of points. These evaluations are then used to determine the step or merit raises of the employees and are also considered for promotional opportunities. Some employees have been denied increases in salary and progression through the various salary steps because of being downgraded in these evaluations. Neither the chief nor the assistant chiefs change the evaluations done by captains of fire fighters.

The hiring process for fire fighters involves an interview of the candidate by a three member interview board. For the last several years, this interview board has consisted of a representative from the City's personnel department, an assistant fire chief and a captain. Fire fighters have not served on any interview boards. Five captains have served on interview boards that interviewed fire fighters applicants from 1985 to the present. In these interviews, each of the interviewers asks the applicant questions and grades their answers on a written form. These interviews and the resulting evaluations constitute 50% of the overall score provided to a fire fighter applicant. With regard to the hiring of paramedics, the chief reviews the credentials of the top three applicants with Captain Bacon (the EMS officer) and requests his opinion.

The chief has informed the captains that they are responsible for disciplining their crew as they deem appropriate. When a captain feels discipline is appropriate, he does not have to review the proposed discipline with the chief prior to implementation. Captains have issued oral reprimands but have never suspended employees. One captain (Bacon) recommended a course of action (namely retesting) to remedy an employee's job inadequacies that was followed by the chief. Neither the chief, assistant chiefs or captains have the authority to discharge employees; this responsibility rests solely with the City administrator or his designee.

There are separate pay ranges for the various classifications in the fire department. Fire fighters are at pay range 8, engineers at pay range 9, paramedics at

pay range 10, captains at pay range 11 and assistant chiefs at pay range 13. Each pay range has a minimum and maximum amounts depending on proficiency and length of service. Under this system, fire fighters at the top of the pay range are paid more than entry level captains. As a result, some fire fighters in the department are paid more than captains. Average salaries for fire department employees are as follows: fire fighters--\$24,346; engineers--\$30,004; paramedics--\$30,413; and captains--\$34,762.

CONCLUSIONS OF LAW

Local 2665 has petitioned to be certified as public employee representative of a bargaining unit comprised of all Kirkwood fire department employees, excluding the chief and assistant chiefs. The City contends that the captains are supervisory employees and, therefore, should be excluded from the bargaining unit. The issue before the Board then is whether the captains are to be included in the appropriate bargaining unit. An appropriate bargaining unit is defined by Section 105.500 (1) RSMo. 1978 as:

A unit of employees at any plant or installation or in a craft or in a function of a public body which establishes a clear and identifiable community of interest among the employees concerned.

Missouri statutory law does not provide further guidelines for determining what constitutes a "clear and identifiable community of interest." However, the Board has consistently held that supervisors cannot be included in the same bargaining unit as the employees they supervise. St. Louis Fire Fighters Association, Local 73 v. City of St. Louis, Missouri, Case No. 76-013 (SBM 1976); See Golden Valley Memorial Hospital v. Missouri State Board of Mediation, 559 S.W.2d 581 (Mo.App. 1977). To determine the appropriate bargaining unit as it concerns the captains, the Board must determine whether the captains are in fact supervisors. In determining the supervisory status of

employees within bargaining units, the Board has consistently examined the following factors:

- (1) The authority to effectively recommend the hiring, promotion, transfer, discipline, or discharge of employees.
- (2) The authority to direct and assign the work force, including a consideration of the amount of independent judgment and discretion exercised in such matters.
- (3) The number of employees supervised, and the number of other persons exercising greater, similar or lesser authority over the same employees.
- (4) The level of pay including an evaluation of whether the supervisor is paid for a skill or for supervision of employees.
- (5) Whether the supervisor is primarily supervising an activity or primarily supervising employees.
- (6) Whether the supervisor is a working supervisor or whether he spends a substantial majority of his time supervising employees.

The union contends that based on the above factors, the Kirkwood fire department captains are not supervisors. In short, the Union asserts that the captains do not meet the above criteria. In their view, the captains are platoon leaders, not supervisory employees, and should therefore be included in the bargaining unit.

The record persuades the Board that the captains have the authority to effectively recommend several of the procedures listed in factor (1) above, namely hiring, promotion and discipline of employees. First, with regard to hiring, the captains have significant input into the hiring process because they have participated on the fire fighter interview boards convened for each recruitment process since 1985. As a member of these interview boards, the captains asked job candidates questions and evaluated them on their response. These interviews and the resulting evaluations which were generated constitute 50% of the test score for job candidates. Given the foregoing, we are persuaded that the captains can effectively recommend the hiring of new fire fighters. Next, with regard to promotions, captains can effectively recommend

promotions in that the evaluations which the captains make of fire fighters are used to determine step or merit increases for employees and are also considered in relation to promotional opportunities. Finally, with regard to discipline, it is clear from the record that captains can discipline their crew as they deem appropriate without reviewing it with the chief prior to implementation. In all disciplinary situations thus far, the captains handled them through the use of oral reprimands and admonishments. However, the captains are empowered with the authority to issue stronger discipline (such as written warnings or suspensions) should the need arise.

Turning to factor (2) above, the captains direct the fire fighters assigned to their crew both at the engine house and at the fire scene. At the engine house, fire fighters perform their daily duties pertaining to engine house, equipment and apparatus maintenance "automatically". That being so, it follows that fire fighters require little direct supervision at the engine house. Having said that though, we disagree with the Union's contention that no direction of the work force is required during non-emergency situations. In our view, some direction of the work force is still necessary during such non-emergency hours, and the captain is clearly responsible for same should the need arise. Likewise, a captain is in command of the fire scene until expressly relieved by someone of higher rank (which seldom happens). the captain in charge of the fire scene directs and coordinates the work force in fire fighting, emergency medical and rescue efforts. While we agree with the Union's characterization of fire fighters as highly trained individuals who know the object of their work, we are persuaded that the captain's direction of the fire fighters at the fire scene involves the exercise of substantial independent judgment and discretion.

Next, with regard to factor (3) above, we are persuaded that the captains exercise the greatest amount of authority over the fire fighters. The captains, who are

the highest ranking member of the department at House 2 and 3, are in charge of all fire fighters on their shift. They are responsible for seeing that department rules and procedures are followed by the fire fighters. It is the captains, and not the chief or assistant chiefs, who evaluate, discipline and direct the fire fighters at both the engine house and the fire scene. At the fire scene, no one exercises more authority over the fire fighters than does the captain in charge who is seldom relieved of his command by the chief or assistant chiefs.

With respect to the level of pay (factor 4), it is noted that some captains earn less than fire fighters. However, this is attributable to the City's pay plan wherein senior fire fighters have a higher maximum salary than the entry level for captains. On average though, captains earn 43% more than fire fighters, 16% more than engineers and 13% more than paramedics. In our view, the captains higher rate of pay is due in large part to their directing the work force and performing administrative duties which are not performed by other fire department employees.

Finally, focusing on the last two factors above, the Board is persuaded that the captains spend a substantial portion of their time supervising employees rather than simply acting as a working foreman. In this regard, it is noted that captains are not required to do housekeeping chores as are the fire fighters; rather, the captains are responsible only for seeing that the work details are satisfactorily completed. Similarly, the captain's time at the fire scene is spent supervising the fire fighters rather than working along side them indicating that the captains are not working supervisors or platoon leaders as suggested by the Union. Therefore, in our view, the captains exercise substantial supervisory authority over fire fighters, particularly at a fire scene, and, as such meet the supervisory test set forth above. Hence, captains are excluded from the proposed bargaining unit.

DECISION

It is the decision of the State Board of Mediation that an appropriate unit is as follows: all employees of the Kirkwood fire department excluding the chief, assistant chiefs, and captains.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the Chairman of the State Board of Mediation, or its designated representative, among the employees in the unit found appropriate, as early as possible, but not later than thirty days from the date below. The exact time and place will be set forth in the notice of election to be issued subsequently, subject to the Board's rules and regulations. Eligible to vote are those in the unit who were employed during the payroll period immediately preceding the date below, including employees who did not work during the period because of vacation or illness. Ineligible to vote are those employees who quit or were discharged for cause since the designated payroll period and who have not been rehired or reinstated before the election. Those eligible to vote shall vote whether or not they desire to be represented for the purpose of exclusive recognition by Local 2665.

It is hereby ordered that the City shall submit to the Chairman of the State Board of Mediation, as well as to Local 2665, within fourteen days from the date of receipt of this decision an alphabetical list of names and addresses of employees in the unit determined above to be appropriate who were employed during the payroll period immediately preceding the date of this decision.

Signed this 4th day of October, 1989.

STATE BOARD OF MEDIATION

(SEAL)

/s/ Mary L. Gant
Mary L. Gant, Chairman

/s/ Milton O. Talent
Milton Talent, Employer Member

/s/ Harvey Henry
Harvey Henry, Employee Member